

## POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

[Public Law 95–620 as Amended]

[As Amended Through P.L. 108–204, Enacted March 2, 2004]

【Currency: This publication is a compilation of the text of Public Law 95-620. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

AN ACT To amend the Tariff Schedules of the United States to provide for the duty-free entry of competition bobsleds and luges.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

【TARIFF MATTERS RELATING TO BOBSLEDS AND LUGES NOT SHOWN.】

### TITLE I—GENERAL PROVISIONS

#### SEC. 101. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Powerplant and Industrial Fuel Use Act of 1978”.

【42 U.S.C. 8301 nt.】

(b) TABLE OF CONTENTS.—

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- Sec. 201. Coal capability of new electric powerplants; certification of compliance.

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**TITLE III—EXISTING FACILITIES**

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- Sec. 303. Rules relating to case-by-case and category prohibitions.

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- [Sec. 402. Repealed.]**
- Sec. 403. Conservation in Federal facilities, contracts, and financial assistance programs.
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- [Sec. 405. Repealed.]**

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- Sec. 601. Assistance to areas impacted by increased coal or uranium production.
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**TITLE VII—ADMINISTRATION AND ENFORCEMENT**

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**Subtitle B—Information and Reporting**

- Sec. 711. Information.
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- Sec. 721. Notice of violation; other general provisions.
- Sec. 722. Criminal penalties.
- Sec. 723. Civil penalties.
- Sec. 724. Injunctions and other equitable relief.
- Sec. 725. Citizen suits.

**Subtitle D—Preservation of Contractual Rights**

- Sec. 731. Preservation of contractual rights.

**Subtitle E—Studies**

- Sec. 741. National coal policy study.
- Sec. 742. Coal industry performance and competition study.<sup>1</sup>
- Sec. 743. Impact on employees.
- Sec. 744. Study of compliance problems of small electric utility systems.
- [Sec. 745. Repealed.]**
- Sec. 746. Socioeconomic impacts of increased coal production and other energy development.
- Sec. 747. Use of petroleum and natural gas in combustors.

**Subtitle F—Appropriations Authorization**

- Sec. 751. Authorization of appropriations.

**Subtitle G—Coordination With Other Provisions of Law**

- Sec. 761. Effect on environmental requirements.
- Sec. 762. Effect of orders under section 2 of ESECA; amendments to ESECA.
- Sec. 763. Environmental impact statements under NEPA.

<sup>1</sup> This item should probably be stricken.

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TITLE VIII—MISCELLANEOUS PROVISIONS

**【Sec. 801. Repealed.】**

Sec. 802. Coal preparation facilities.

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Sec. 804. Office of Rail Public Counsel.

Sec. 805. Retroactive application of certain remedial orders.

Sec. 806. Annual report.

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TITLE IX—EFFECTIVE DATES

Sec. 901. Effective date.<sup>2</sup>

Sec. 902. Interim petition and consideration for certain exemptions.

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<sup>2</sup> So in law. Probably should be “Effective dates”.

**SEC. 102. FINDINGS; STATEMENT OF PURPOSES.**

(a) FINDINGS.—The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended<sup>3</sup> use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing and new electric powerplants; and

(2) the purposes of this Act are furthered in cases in which coal or other alternate fuels are used by electric powerplants, consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) STATEMENT OF PURPOSES.—The purpose<sup>4</sup> of this Act, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum as a primary energy source;

(3) to the extent permitted by this Act, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(4) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(5) to encourage the modernization or replacement of existing and new electric powerplants which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(6) to require that existing and new electric powerplants which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this Act comply with applicable environmental requirements;

(7) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this Act by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(8) to insure that adequate supplies of natural gas are available for essential agricultural uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(9) to reduce the vulnerability of the United States to energy supply interruptions; and

(10) to regulate interstate commerce.

<sup>3</sup>Probably should be "expanded".

<sup>4</sup>Probably should be "purposes".

[42 U.S.C. 8301]

**SEC. 103. DEFINITIONS.**

(a) Unless otherwise expressly provided, for the purposes of this Act—

(1) The term “Secretary” means the Secretary of Energy.

(2) The term “person” means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term “natural gas” means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term “natural gas” does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu’s per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b); or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu’s per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term “petroleum” means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term “coal” means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term “alternate fuel” means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms “electric powerplant” and “powerplant” mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu’s per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu’s per hour or greater.

(B) For purposes of subparagraph (A), the term “electric generating unit” does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu’s per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term “new electric powerplant” means—

(A) any electric powerplant for which construction or acquisition began on a date on or after the date of enactment of this Act; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this Act without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term “existing electric powerplant” means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this Act as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms “major fuel-burning installation” and “installation” means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) The terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

(11) The term "new major fuel-burning installation" means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after the date of the enactment of this Act; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before the date of the enactment of this Act, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this Act without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term “construction or acquisition began” means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this Act—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary; and

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority).

(14) The term “construction” means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term “primary energy source” means the fuel or fuels used by any existing or new electric powerplant, except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amount of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term “site limitation” means, when used with respect to any powerplant, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

(17) The term “applicable environmental requirements”

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to



emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act, the Federal Water Pollution Control Act, the Solid Waste Disposal Act, or the National Environmental Policy Act of 1969.

(18)(A) The term “peakload powerplant” means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant’s design capacity multiplied by 1,500 hours.

(B) The term “intermediate load powerplant” means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant’s design capacity multiplied by 3,500 hours.

(C) The term “base load powerplant” means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant’s design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after the date of the enactment of this Act, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant’s design capacity may be determined for purposes of this paragraph.

(19) The term “cogeneration facility” means an electric powerplant which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term “cost”, unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant, discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric powerplant, such costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term “State regulatory authority” means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term “air pollution control agency” has the same meaning as given such term by section 302(b) of the Clean Air Act.

(23) The term “electric utility” means any person including any affiliate, or Federal agency which sells electric power.

(24) The term “affiliate”, when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

(25) The term “Federal agency” means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term “Btu” means British thermal unit.

(27) The term “Mcf” means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term “mixture”, when used in relation to fuels used in a unit, means a mixture of such fuels or combination of such fuels used simultaneously or alternately in such unit.

(29) The term “fluidized bed combustion” means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(b) SPECIAL RULES RELATING TO DEFINITIONS OF NATURAL GAS AND ALTERNATE FUEL.—(1) Subject to paragraph (2), natural gas which is to be used by a powerplant shall, for purposes of this Act (other than this subsection), be excluded from the definition of “natural gas” under subsection (a) (3)(B)(iii) and shall be included within the definition of “alternate fuel” under subsection (a)(6) if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, or local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved.

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant shall be conditioned on the person using such natural gas submitting to the Secretary a report not

later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

(4) For purposes of this subsection, the term “pipeline” means any interstate or intrastate pipeline or local distribution company.

[42 U.S.C. 8302]

#### **SEC. 104. TERRITORIAL APPLICATION.**

The provisions of this Act shall only apply within the contiguous 48 States and the District of Columbia.

[42 U.S.C. 8303]

## **TITLE II—NEW FACILITIES**

### **Subtitle A—Prohibitions**

#### **SEC. 201. COAL CAPABILITY OF NEW ELECTRIC POWERPLANTS; CERTIFICATION OF COMPLIANCE.**

(a) **GENERAL PROHIBITION.**—Except to such extent as may be authorized under subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) **CAPABILITY TO USE COAL OR ALTERNATE FUEL.**—An electric powerplant has the capability to use coal or another alternate fuel for purposes of this section if such electric powerplant—

(1) has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) **APPLICABILITY TO BASE LOAD POWERPLANTS.**—(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) SELF-CERTIFICATION.—(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction, or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b). Such certification shall be effective to establish compliance with the requirement of subsection (a) as of the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the Federal Register a notice reciting that the certification has been filed.

(2) The Secretary, within 60 days after the filing of a certification under paragraph (1), may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certification.

[42 U.S.C. 8311]

## Subtitle B—Exemptions

### SEC. 211. TEMPORARY EXEMPTIONS.

(a) GENERAL EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source;

(2) one or more site limitations exist which would ot<sup>5</sup> permit the location or operation of such a powerplant coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 201 could not be satisfied without violating applicable environmental requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.<sup>6</sup>—After consideration of a petition (and comments

<sup>5</sup>So in law. Apparently should be “not”.

<sup>6</sup>Section 175(j) of the Energy Security Act provides as follows:

(j)(1) For purposes of section 211(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3300), a petitioner under such section shall be deemed to have made the demonstrations required by section 211(b)(1) and section 211(b)(2) of such Act if he has entered into a legally valid agreement with a qualified producer of synthetic fuel for the future delivery of sufficient quantities of synthetic fuel to be used at the facility for which the exemption is sought.

thereon) for an exemption for a powerplant from the prohibitions of subtitle A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 214(b).

(e) DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraph (2), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant before the powerplant is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

[42 U.S.C. 8321]

#### SEC. 212. PERMANENT EXEMPTIONS

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, ENVIRONMENTAL REQUIREMENTS, OR ADEQUATE CAPITAL.—(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary en-

The submission to the Secretary of Energy of evidence of the existence of such a legally valid agreement also shall be deemed to satisfy the requirement of section 211(b) of such Act that the petitioner file and maintain a compliance plan satisfying the requirements of section 214(b) of such Act.

(2) For purposes of paragraph (1), a person shall be deemed to be a “qualified producer of synthetic fuel” if he received financial assistance in the form of a loan, loan guarantee, purchase agreement, or price guarantee pursuant to subtitle D.

(3) In addition, in order to constitute a “legally valid agreement” for purposes of paragraph (1), the agreement with the qualified synthetic fuel producer must provide for the initial delivery of synthetic fuel within the period of time during which such facility is exempted pursuant to section 211(e) of such Act.

(4) For purposes of section 211(b) of such Act, an extension or renewal under section 211(e)(1) of such Act or section 211(e)(2)(B) of such Act may be granted at the time the original exemption is issued or at any subsequent date.

(5) Nothing in this subsection shall be construed to relieve the petitioner from compliance with subtitle A of title II of the Powerplant and Industrial Fuel Use Act of 1978.

ergy source (i) will not be available within the first 10 years of the useful life of the powerplant, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of the fuel that would be used as a primary energy source during the useful life of the powerplant involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall be made with respect to the site of such powerplant and reasonable alternative sites.

(b) **PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.**—After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1) (A) through (D); and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) **PERMANENT EXEMPTION FOR COGENERATION.**—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) **PERMANENT EXEMPTION FOR CERTAIN MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.**—After consideration of a petition (and comments thereon) for an exemption for a powerplant from the prohibitions of subtitle A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the powerplant uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(2) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of such powerplant consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(e) **PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.**—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) **PERMANENT EXEMPTION FOR POWERPLANTS NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.**—After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of subtitle A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) in the time required to prevent such impairment of service.

[42 U.S.C. 8322]

#### **SEC. 213. GENERAL REQUIREMENTS FOR EXEMPTIONS.**

(a) **USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.**—Except in the case of an exemption under section 212 (d), the Secretary may grant a permanent exemption for a powerplant under this subtitle only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 212(d) would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) **STATE APPROVAL REQUIRED FOR POWERPLANT.**—If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption, to the extent it applies to the prohibition under section 201 against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained.

(c) **NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.**—(1) Except in the case of an exemption under section 212

(c), the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

[42 U.S.C. 8323]

#### **SEC. 214. TERMS AND CONDITIONS; COMPLIANCE PLANS.**

(a) **TERMS AND CONDITIONS GENERALLY.**—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) **COMPLIANCE PLANS.**—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or<sup>7</sup> such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

[42 U.S.C. 8324]

### **TITLE III—EXISTING FACILITIES**

#### **Subtitle A—Prohibitions**

##### **SEC. 301. EXISTING ELECTRIC POWERPLANTS.**

(a) **CERTIFICATION BY POWERPLANTS OF COAL CAPABILITY.**—At any time, the owner or operator of an existing electric powerplant may certify to the Secretary, for purposes of subsection (b)—

(1) whether or not such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) whether or not such powerplant could have the technical capability to use coal or another alternate fuel as a primary energy source without having—

(A) substantial physical modification of the powerplant, or

<sup>7</sup> So in law. Probably should be “for”. See P.L. 95-620, sec. 214, 92 Stat. 3304.



(B) substantial reduction in the rated capacity of the powerplant; and

(3) whether or not it is financially feasible to use coal or another alternate fuel as a primary energy source in such a powerplant.

(b) **AUTHORITY OF SECRETARY TO PROHIBIT WHERE COAL OR ALTERNATE FUEL CAPABILITY EXISTS.**—The Secretary may prohibit, in accordance with section 303(a) or (b), the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if an affirmative certification under subsection (a)(1), (2), and (3) is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification.

(c) **AUTHORITY OF SECRETARY TO PROHIBIT EXCESSIVE USE IN MIXTURES.**—At any time, the owner or operator of an existing electric powerplant may certify to the Secretary for purposes of this subsection whether or not it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source in that powerplant. If an affirmative certification under this subsection is in effect with respect to such powerplant and if, after examining the basis for the certification, the Secretary concurs with the certification, the Secretary may prohibit, in accordance with section 303(a), the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(d) **AMENDMENT OF SUBSECTION (a) AND (c) CERTIFICATIONS.**—The owner or operator of any such powerplant may at any time amend any certification under subsection (a) or (c) in order to take into account changes in relevant facts and circumstances; except that no such amendment to such a certification may be made after the date of any final prohibition under subsection (b) or (c) based on that certification.

[42 U.S.C. 8341]

#### **SEC. 303. RULES RELATING TO CASE-BY-CASE AND CATEGORY PROHIBITIONS.**

(a) **CASE-BY-CASE PROHIBITIONS.**—(1) Except to the extent authorized by subsection (b), the Secretary shall prohibit any powerplant from using natural gas or petroleum under the authority granted him under section 301 (b) or (c) only by means of a final order issued by him which shall be limited to the particular powerplant involved.

(2) The Secretary may issue such a final order only with respect to a powerplant which is not, at the time the proposed order is issued, covered by a final rule issued under section (b).

(b) **PROHIBITIONS APPLICABLE TO CATEGORIES OF FACILITIES.**—(1) The Secretary may prohibit, by rule, the use of natural gas or petroleum under section 301(b) in existing electric powerplants.

(2) Each powerplant to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 701(b).

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants (such as the intermittent use, size, age, or geographic location of such powerplants. Any such rules shall not apply in the case of any existing electric powerplant with respect to which a comparable prohibition was issued by order.

[42 U.S.C. 8343]

### Subtitle B—Exemptions

#### SEC. 311. TEMPORARY EXEMPTIONS.

(a) TEMPORARY EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 301 could not be satisfied without violating applicable environmental requirements.

(b) TEMPORARY EXEMPTION BASED UPON FUTURE USE OF SYNTHETIC FUELS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of subtitle A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(c) TEMPORARY EXEMPTION BASED UPON USE OF INNOVATIVE TECHNOLOGIES.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of

subtitle A for a powerplant, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b).

(d) TEMPORARY EXEMPTION FOR UNITS TO BE RETIRED.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 314(b) (other than paragraph (1)(B)).

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle may not be granted for any powerplant once an exemption under this subsection has been granted for such powerplant.

(e) TEMPORARY PUBLIC INTEREST EXEMPTION.—After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of subtitle A for a powerplant, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this Act.

(f) TEMPORARY EXEMPTION FOR PEAKLOAD POWERPLANTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) TEMPORARY EXEMPTION FOR POWERPLANTS WHERE NECESSARY TO MAINTAIN RELIABILITY OF SERVICE.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this Act, an exemption under this subtitle (other than a permanent exemption under section 312(f) for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) DURATION OF TEMPORARY EXEMPTIONS.—(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

[42 U.S.C. 8351]

#### SEC. 312. PERMANENT EXEMPTIONS.

(a) PERMANENT EXEMPTION DUE TO LACK OF ALTERNATE FUEL SUPPLY, SITE LIMITATIONS, OR ENVIRONMENTAL REQUIREMENTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant;

(B) one or more site limitations exist which would not permit the operation of such a powerplant using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of subtitle A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) may not be granted an exemption under this subsection.

(b) PERMANENT EXEMPTION DUE TO CERTAIN STATE OR LOCAL REQUIREMENTS.—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary may, by order, grant a

permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this subtitle could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this Act.

(c) **PERMANENT EXEMPTION FOR COGENERATION.**—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) **PERMANENT EXEMPTION FOR CERTAIN FUEL MIXTURES CONTAINING NATURAL GAS OR PETROLEUM.**—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(3) The Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) **PERMANENT EXEMPTION FOR EMERGENCY PURPOSES.**—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant will be maintained and operated only for emergency purposes (as defined by rule by the Secretary.)

(f) **PERMANENT EXEMPTION FOR PEAKLOAD POWERPLANTS.**—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a

powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in a impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) PERMANENT EXEMPTION FOR INTERMEDIATE LOAD POWERPLANTS.—(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) PERMANENT EXEMPTION FOR USE OF NATURAL GAS BY CERTAIN POWERPLANTS WITH CAPACITIES OF LESS THAN 250 MILLION BTU'S PER HOUR.—(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of subtitle A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 301 and prohibitions established by final rules or orders issued before January 1, 1990.

(i) **PERMANENT EXEMPTION FOR THE USE OF LNG BY CERTAIN POWERPLANTS.**—After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of subtitle A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

【42 U.S.C. 8352】

#### **SEC. 313. GENERAL REQUIREMENTS FOR EXEMPTIONS.**

(a) **USE OF MIXTURES OR FLUIDIZED BED COMBUSTION NOT FEASIBLE.**—Except in the case of an exemption under section 312 (b), (f), or (i), the Secretary may grant a permanent exemption for a powerplant under this subtitle only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 312(b) would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) **NO ALTERNATIVE POWER SUPPLY IN THE CASE OF A POWERPLANT.**—(1) In the case of an exemption under section 312 (b) or (g), the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

【42 U.S.C. 8353】

**SEC. 314. TERMS AND CONDITIONS; COMPLIANCE PLANS.**

(a) **TERMS AND CONDITIONS GENERALLY.**—Any exemption from any prohibition under this subtitle shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this Act. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b)) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant covered by such exemption will comply with the applicable prohibitions.

(b) **COMPLIANCE PLANS.**—A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this Act will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

[42 U.S.C. 8354]

## **TITLE IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES**

[Section 401 repealed by section 1(a)(3) of Public Law 100–42 (101 Stat. 310).]

[Section 402 repealed by section 1(a)(4) of Public Law 100–42 (101 Stat. 310).]

**SEC. 403. CONSERVATION IN FEDERAL FACILITIES, CONTRACTS, AND FINANCIAL ASSISTANCE PROGRAMS.**

(a) **FEDERAL FACILITIES.**—(1) Each Federal agency owning or operating any electric powerplant shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this Act, to the same extent as would be the case if such powerplant were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a



part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review.

(b) **FEDERAL CONTRACTS AND FINANCIAL ASSISTANCE.**—(1) In order to implement the purposes of this Act, the President shall, not later than 30 days after the effective date of this Act, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this Act relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this Act if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

[42 U.S.C. 8373]

#### **SEC. 404. EMERGENCY AUTHORITIES.**

(a) **COAL ALLOCATION AUTHORITY.**—(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God; the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term “coal” means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) EMERGENCY PROHIBITION ON USE OF NATURAL GAS OR PETROLEUM.—If the President declares a severe energy supply interruption, as defined in section 3(8) of the Energy Policy and Conservation Act, the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 110(d) of the Clean Air Act, required by such prohibition shall be issued only in accordance with section 110(f) of the Clean Air Act.

(c) EMERGENCY STAYS.—The President may, by order, stay the application of any provision of this Act, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) DURATION OF EMERGENCY ORDERS.—(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 551 of the Energy Policy and Conservation Act. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 551 of the Energy Policy and Conservation Act.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of title II of the Act of September 14, 1976 (Public Law 94–412; 50 U.S.C. 1621 and following).

(e) DELEGATION OF AUTHORITY PROHIBITED.—The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) PUBLICATION AND REPORTS TO CONGRESS OF ORDERS.—Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

■42 U.S.C. 8374■

【Section 405 repealed by section 1(a)(5) of Public Law 100–42 (101 Stat. 310).】

【TITLE V repealed by section 1(a)(6) of Public Law 100–42 (101 Stat. 310).】

## TITLE VI—FINANCIAL ASSISTANCE

### SEC. 601. ASSISTANCE TO AREAS IMPACTED BY INCREASED COAL OR URANIUM PRODUCTION.

(a) DESIGNATION OF IMPACTED AREAS.—(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this Act.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activities and which are not prohibited from being used under provisions of law in effect on the date of the enactment of this Act shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) PLANNING GRANTS.—(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated

and approved under subsection (a) for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socio-economic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socio-economic impacts determined under subparagraph (B) (such as any increased need for housing, or public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) LAND ACQUISITION AND DEVELOPMENT GRANTS.—(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for

the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b).

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) GENERAL REQUIREMENTS REGARDING ASSISTANCE.—(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a), or to a council of local governments which includes one or more local governments serving such area (in lieu of making such grant solely to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and

the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provided only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal financial assistance is provided or on proper application would be provided.

(e) DEFINITIONS.—For the purposes of this section—

(1) The term “coal or uranium development activities” means the production, processing, or transportation of coal or uranium.

(2) The term “site development” means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) REPORTS.—Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) shall prepare and transmit a report to the Secretary of Energy within 90 days after a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or transported by such person during each of such calendar years; and

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) ADMINISTRATION.—The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) APPROPRIATIONS AUTHORIZATION.—(1) There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, \$60,000,000 for fiscal year 1979 and \$120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the

amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) **PROTECTION FROM CERTAIN HAZARDOUS ACTIONS.**—Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or nonmetallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and nonmetallic mines from actions occurring at such activities that pose a hazard to such property or persons.

(j) **REORGANIZATION.**—The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5, United States Code, or under any other provision of law, other than under specific provisions of a law enacted after the date of the enactment of this Act. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

[42 U.S.C. 8401]

**SEC. 602. LOANS TO ASSIST POWERPLANT ACQUISITIONS OF AIR POLLUTION CONTROL EQUIPMENT.**

(a) **AUTHORITY TO MAKE LOANS.**—The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this Act for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) **LIMITATIONS AND CONDITIONS.**—A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section, plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

- (C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and
- (D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.
- (c) ALLOCATION AND PRIORITIES.—In making loans or commitments to loan pursuant to this section, the Secretary shall—
- (1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and
- (2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under title III (or under section 2 of the Energy Supply and Environmental Coordination Act of 1974).
- (d) DEFINITIONS.—For purposes of this section—
- (1) The term “certified pollution control device” means a new identifiable device which—
- (A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;
- (B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;
- (C) the Administrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act;
- (D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and
- (E) the construction of which began after the effective date of this Act.
- (2) The term “small municipal or rural cooperative electric powerplant” means an electric generating unit, which—
- (A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and
- (B) is owned or operated by a municipality or a rural electric cooperative.
- (e) RECORDS.—(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.



(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completing of the project or undertaking referred to in subsection (a), or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

(f) DEFAULT.—(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligator or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) DEPOSIT OF RECEIPTS.—Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) AUTHORIZATION OF APPROPRIATION.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed \$400,000,000 for fiscal year 1979 and \$400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) may be exercised only to the extent as may be provided in advance in appropriation Acts.

[42 U.S.C. 8402]

## TITLE VII—ADMINISTRATION AND ENFORCEMENT

### Subtitle A—Procedures

#### SEC. 701. ADMINISTRATIVE PROCEDURES.

(a) GENERAL RULE MAKING.—Except to the extent otherwise provided in this section or other provisions of this Act, rules pre-

scribed under this Act shall be made in accordance with the procedures set forth in section 553 of title 5, United States Code.

(b) NOTICES OF RULES AND ORDERS IMPOSING PROHIBITIONS.—Before the Secretary prescribes any rule or issues any order imposing a prohibition under this Act he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant required to be specifically identified in such rule or order.

(c) PETITIONS FOR EXEMPTIONS.—(1) Any petition for an exemption from any prohibition under this Act shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after the date of the enactment of this Act.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption, shall issue a final order granting or denying the petition for such exemption, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(d) PUBLIC COMMENT ON PROHIBITIONS AND EXEMPTIONS.—(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption under this Act, any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall pro-

vide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) TRANSCRIPT.—A transcript shall be kept of any public hearing made in accordance with this section.

(f) ENVIRONMENTAL PROTECTION AGENCY COMMENT.—A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this Act (other than under section 404), or a petition for an exemption (or permit) under this Act (other than under section 404), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d).

(h) COORDINATION WITH OTHER PROVISIONS OF LAW.—(1) Except as provided in sections 702(c)(4), 723(d)(5), and 724 of this Act, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this Act.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 404.

(3) The procedures applicable under this Act shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this Act (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this Act, and declaring that such provision supersedes, in whole or in part, the procedures of this Act.

[42 U.S.C. 8411]

#### SEC. 702. JUDICIAL REVIEW.

(a) PUBLICATION AND DELAY OF PROHIBITION OR EXEMPTION TO ALLOW FOR REVIEW.—Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this Act shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) PUBLICATION OF DENIAL OF EXEMPTION OR PERMIT.—Any final order issued by the Secretary denying any petition for an exemption or a permit under this Act shall be published in the Federal Register, together with the reasons for such action.

(c) JUDICIAL REVIEW.—(1) Any person aggrieved by any final rule or order referred to in subsection (a) or in section 404, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b), may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b), file a petition with the United States court of appeals for the circuit wherein such person resides, or has his prin-

cipal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, United States Code, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 502(c) of the Department of Energy Organization Act.

[42 U.S.C. 8412]

## Subtitle B—Information and Reporting

### SEC. 711. INFORMATION.

(a) **AUTHORITY OF SECRETARY.**—For purposes of carrying out his responsibilities under this Act, the Secretary may require, under the authority of this Act or any other authority administered by him, any person owning, operating or controlling any electric powerplant, or any other person otherwise subject to this Act to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this Act and insure compliance with the provisions of this Act, and any rule or order thereunder. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 11 of such Act.

(b) **AUTHORITY OF PRESIDENT AND FEDERAL ENERGY REGULATORY COMMISSION.**—In the case of responsibilities expressly given by this Act to the President or the Federal Energy Regulatory Commission, subsection (a) shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

(c) **NATURAL GAS USAGE BY ELECTRIC UTILITIES.**—(1) For purposes of section 404(b) and other emergency authorities, the Secretary shall obtain data necessary to determine—

(A) within 6 months after the date of the enactment of this subsection, the total quantities of natural gas used as a primary energy source by each electric utility during calendar year 1977, and

(B) on a semiannual basis, the total quantities of natural gas used as a primary energy source during the previous 6-month period by each electric utility.

(2) ~~Repealed by section 1051(e) of Public Law 104-66 (109 Stat. 716).~~

**SEC. 712. COMPLIANCE REPORT.**

(a) **GENERALLY.**—Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this Act shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this Act may be filed.

(b) **REPORT ON IMPLEMENTATION OF SECTION 808 PLAN.**—Any electric utility required to submit a conservation plan under section 808 shall annually submit to the Secretary a report identifying the steps taken during the preceding year to implement such plan.

[42 U.S.C. 8422]

## Subtitle C—Enforcement

**SEC. 721. NOTICE OF VIOLATION; OTHER GENERAL PROVISIONS.**

(a) **NOTICE OF VIOLATION.**—(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this Act, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this Act for any act or omission occurring before the issuance of notice.

(b) **INDIVIDUAL LIABILITY OF CORPORATE PERSONNEL.**—Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this Act, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 722, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(d) FEDERAL AGENCIES.—The provisions of sections 722 and 723 shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

[42 U.S.C. 8431]

#### SEC. 722. CRIMINAL PENALTIES.

Any person who willfully violates any provision of this Act, or any rule or order thereunder, shall be subject to a fine of not more than \$50,000, or to imprisonment for not more than one year, or both, for each violation.

[42 U.S.C. 8432]

#### SEC. 723. CIVIL PENALTIES.

(a) GENERAL CIVIL PENALTY.—Any person who violates any provision of this Act, or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than \$25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) CIVIL PENALTIES FOR OPERATION OR USE OF FUELS IN EXCESS OF EXEMPTION.—In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed \$10 per barrel of petroleum or \$3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(2) Any industrial user who violates prohibition under subsection (b)(2) of section 402 shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed \$500 per day of violation for each outdoor lighting fixture involved which was used by an industrial customer, but not to exceed \$5,000 per outdoor lighting fixture involved.

(3) The penalties under this subsection shall only apply in the case of a violation by any person who at the time of the violation had knowledge or reasonably should have had knowledge that the action involved was prohibited under section 402.

(d) ASSESSMENT.—(1) Before issuing an order assessing a civil penalty against any person under this Act, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5, United States Code, before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, United States Code, or of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 502(c) of the Department of Energy Organization Act, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 402(d) of the Department of Energy Organization Act shall not apply with respect to the functions of the Secretary under this subsection.

【42 U.S.C. 8433】

**SEC. 724. INJUNCTIONS AND OTHER EQUITABLE RELIEF.**

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this Act, or any rule or order thereunder, a civil action, may be brought, in accordance with section 502(c) of the Department of Energy Organization Act, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

[42 U.S.C. 8434]

**SEC. 725. CITIZENS SUITS.**

(a) **GENERAL RULE.**—Except as otherwise provided in subsection (b), any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this Act if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this Act which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

(b) **NOTICE TO SECRETARY OR AGENCY HEAD.**—No action may be commenced under subsection (a) before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) **AUTHORITY OF SECRETARY TO INTERVENE.**—In any action brought under subsection (a), the Secretary, if not a party, may intervene as a matter of right.

(d) **COSTS OF LITIGATION.**—The court, in issuing any final order in any action brought under subsection (a), may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) **OTHER REMEDIES TO REMAIN AVAILABLE.**—Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this Act or any rule thereunder, or to seek any other relief (including relief against the Secretary or the agency head involved).

[42 U.S.C. 8435]

**Subtitle D—Preservation of Contractual Rights****SEC. 731. PRESERVATION OF CONTRACTUAL INTEREST.**

(a) **RIGHT TO TRANSFER CONTRACTUAL INTERESTS.**—(1) If any person receives natural gas, the use of which is prohibited by the provisions of title III or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person re-



ceiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) DETERMINATION OF CONSIDERATION.—(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contracts, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by appli-

cation of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) **RESTRICTIONS ON TRANSFERS UNENFORCEABLE.**—(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1).

(d) **CONTRACTUAL OBLIGATIONS UNAFFECTED.**—The person acquiring contractual interests transferred pursuant to subsection (a)(1) shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) **DEFINITIONS.**—For purposes of this section—

(1) The term “just compensation”, when used with respect to any transfer of contractual interests authorized by subsection (a)(1), means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1), in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant, exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assets located on the premises containing such electric powerplant, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term “just compensation”, when used with respect to subsection (a)(2), means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1),

to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1), and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term “contractual interests”, with respect to a contract described in subsection (a)(1), includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term “State” means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term “interstate pipeline” means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act.

(6) The term “Commission” means the Federal Energy Regulatory Commission.

(7) The term “contract”, when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) COORDINATION WITH THE NATURAL GAS ACT.—(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of sections 4, 5, and 7 of the Natural Gas Act. The Commission shall not deny a pass-through by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1).

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the jurisdiction of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1).

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1). The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) VOLUME LIMITATION.—No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1), shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1), if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under title III of this Act or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) JUDICIAL REVIEW.—Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5, United States Code.

[42 U.S.C. 8441]

## Subtitle E—Studies

### SEC. 741. NATIONAL COAL POLICY STUDY.

(a) STUDY.—The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) REPORT.—Within 18 months after the effective date of this Act, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;

(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;

(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b), the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed \$18,000,000, for use in carrying out the purposes of this section.

【42 U.S.C. 8451】

**SEC. 743. IMPACT ON EMPLOYEES.**

(a) **EVALUATION.**—The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this Act, including, if appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) **INVESTIGATION AND HEARINGS.**—On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. The Secretary of Labor shall participate in each such investigation.

(c) **RULE OF CONSTRUCTION.**—Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this Act.

[42 U.S.C. 8453]

**SEC. 744. STUDY OF COMPLIANCE PROBLEM OF SMALL ELECTRIC UTILITY SYSTEMS.**

(a) **STUDY.**—The Secretary shall conduct a study of the problems of compliance with this Act experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this Act.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed \$500,000 to carry out the provisions of this section.

[42 U.S.C. 8454]

[Section 745 repealed by section 2021(j)(1) of Public Law 104–66 (109 Stat. 727).]

**SEC. 746. SOCIOECONOMIC IMPACTS OF INCREASED COAL PRODUCTION AND OTHER ENERGY DEVELOPMENT.**

(a) **COMMITTEE.**—There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health, Education, and Welfare, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget,

and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c).

(b) **FUNCTIONS OF COMMITTEE.**—It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

(1) the level of assistance provided under this Act and any other programs related to impact assistance,

(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) **REPORT.**—Within 1 year after the effective date of this Act, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

[42 U.S.C. 8456]

#### **SEC. 747. USE OF PETROLEUM AND NATURAL GAS IN COMBUSTORS.**

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this Act. In conducting such study, the Secretary shall—

(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this Act, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

[42 U.S.C. 8457]

### **Subtitle F—Appropriations Authorization**

#### **SEC. 751. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated to the Secretary for fiscal year 1979 \$11,900,000, to carry out the provisions of this Act (other than provisions for which an appropriations authorization is otherwise expressly provided in this Act) and section 2 of the Energy Supply and Environmental Coordination Act of 1974.

[42 U.S.C. 8461]

## **Subtitle G—Coordination with other Provisions of Law**

### **SEC. 761. EFFECT ON ENVIRONMENTAL REQUIREMENTS.**

(a) **COMPLIANCE WITH APPLICABLE ENVIRONMENTAL REQUIREMENTS.**—Except as provided in section 404, nothing in this Act shall be construed as permitting any existing or new electric powerplant to delay or avoid compliance with applicable environmental requirements.

(b) **LOCAL ENVIRONMENTAL REQUIREMENTS.**—In the case of any new or existing facility—

- (1) which is subject to any prohibition under this Act, and
  - (2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,
- the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under section 212(b) or section 312(b); and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

[42 U.S.C. 8471]

### **SEC. 762. EFFECT OF ORDERS UNDER SECTION 2 OF ESECA; AMENDMENTS TO ESECA.**

(a) **EFFECT OF CONSTRUCTION ORDERS.**—Any electric powerplant or major fuel-burning installation issued an order pursuant to section 2(c) of the Energy Supply and Environmental Coordination Act of 1974 that is pending on the effective date of this Act shall, notwithstanding the provisions of such section 2(c) or any other provision of this Act, be subject to the provisions of this Act as if it were a new electric powerplant or new major fuel-burning installation, as the case may be, except that if such order became final before such date, the provisions of title II of this Act shall not apply to such powerplant or installation.

(b) **EFFECT OF PROHIBITION ORDERS.**—The provisions of titles II and III shall not apply to any powerplant or installation for which an order issued pursuant to section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 before the effective date of this Act is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 2(a) which is pending on the effective date of this Act may elect to be covered by title II or III (as the case may be) rather than such section 2. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after the date of the enactment of this Act, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) **VALIDITY OF ORDERS.**—The preceding provisions of this Act shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 2 of the Energy Supply and Environmental Coordination Act of 1974, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in



effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 2 of such Act shall terminate on the effective date of this Act.

(d) AMENDMENTS TO ESECA.—(1) Section 11(g) of the Energy Supply and Environmental Coordination Act of 1974 is amended—

- (1) by striking out paragraph (2), and
- (2) in paragraph (1), by striking out “(g)(1)” and inserting in lieu thereof “(g)”.

[42 U.S.C. 8472]

#### SEC. 763. ENVIRONMENTAL IMPACT STATEMENTS UNDER NEPA.

The following actions are not deemed to be major Federal actions for purposes of section 102(2)(C) of the National Environmental Policy Act of 1969:

- (1) the grant or denial of any temporary exemption under this Act for any electric powerplant;
- (2) the grant or denial of any permanent exemption under this Act for any existing electric powerplant, other than an exemption—
  - (A) under section 312(c), relating to cogeneration;
  - (C) under section 312(b), relating to certain State or local requirements;
  - (D) under section 312(g), relating to certain intermediate load powerplants; and
- (3) the grant or denial of any exemption under this Act for any powerplant for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 102 of the National Environmental Policy Act of 1969.

[42 U.S.C. 8473]

### TITLE VIII—MISCELLANEOUS PROVISIONS

[Section 801 repealed by section 1(a)(7) of Public Law 100–42 (101 Stat. 310).]

#### SEC. 802. COAL PREPARATION FACILITIES.

[This section amended section 102(c)(4) of the Energy Policy and Conservation Act.]

#### SEC. 803. RAILROAD REHABILITATION FOR CARRIAGE OF COAL.

(a) STATEMENT OF PURPOSE.—It is the purpose of this section to facilitate and encourage the use of and conversion to coal as an energy resource in regions and States which can use coal in greater quantity as a substitute for imported petroleum.

(b) AUTHORIZATION.—There is authorized to be appropriated, for deposit in the Railroad Rehabilitation and Improvement Fund

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established under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822), not more than \$100,000,000. The money appropriated to the Railroad Rehabilitation and Improvement Fund pursuant to this subsection shall be expended by the Secretary of Transportation, in the same manner as other money in such Fund, to provide financial assistance to railroads for maintenance, rehabilitation, improvement, and acquisition of equipment and facilities which will be used for the rail transportation of coal to regions or States which can use coal in greater quantities (whether or not such equipment or facilities were designed specifically for such purpose).

(c) CONFORMING AMENDMENTS.—[This subsection amended sections 501, 502, and 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821(2)).]

**SEC. 804. OFFICE OF RAIL PUBLIC COUNSEL.**

[This section amended section 27 of the Interstate Commerce Act.]

**SEC. 805. RETROACTIVE APPLICATION OF CERTAIN REMEDIAL ORDERS.**

[This section amended section 503 of the Department of Energy Organization Act (42 U.S.C. 7193).]

[Section 806 repealed by section 1051(e) of Public Law 104–66 (109 Stat. 716).]

**SEC. 807. SUBMISSION OF REPORTS.**

Copies of any report required by this Act to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

[42 U.S.C. 8483]

**SEC. 808. ELECTRIC UTILITY CONSERVATION PLAN.**

(a) APPLICABILITY.—An electric utility is subject to this subsection if—

(1) the utility owns or operates any existing electric powerplant in which natural gas was used as a primary energy source at any time during the 1-year period ending on the date of the enactment of this section, and

(2) the utility plans to use natural gas as a primary energy source in any electric powerplant.

(b) SUBMISSION AND APPROVAL OF PLAN.—The Secretary shall require each electric utility subject to this section to—

(1) submit, within 1 year after the date of the enactment of this section, and have approved by the Secretary, a conservation plan which meets the requirements of subsection (c); and

(2) implement such plan during the 5-year period beginning on the date of the initial approval of such plan.

(c) CONTENTS OF PLAN.—(1) Any conservation plan under this section shall set forth means determined by the utility to achieve conservation of electric energy not later than the 5th year after its initial approval at a level, measured on an annual basis, at least

equal to 10 percent of the electric energy output of that utility during the most recent 4 calendar quarters ending prior to the date of the enactment of this section which is attributable to natural gas.

(2) The conservation plan shall include—

(A) all activities required for such utility by part 1 of title II of the National Energy Conservation Policy Act;

(B) an effective public information program for conservation; and

(C) such other measures as the utility may consider appropriate.

(3) Any such plan may set forth a program for the use of renewable energy sources (other than hydroelectric power).

(4) Any such plan shall contain procedures to permit the amounts expended by such utility in developing and implementing the plan to be recovered in a manner specified by the appropriate State regulatory authority (or by the utility in the case of a non-regulated utility).

(d) PLAN APPROVAL.—(1) The Secretary shall, by order, approve or disapprove any conservation plan proposed under this subsection by an electric utility within 120 days after its submission. The Secretary shall approve any such proposed plan unless the Secretary finds that such plan does not meet the requirements of subsection (c) and states in writing the reasons therefor.

(2) In the event the Secretary disapproves under paragraph (1) the plan originally submitted, the Secretary shall provide a reasonable period of time for resubmission.

(3) An electric utility may amend any approved plan, except that the plan as amended shall be subject to approval in accordance with paragraph (1).

【42 U.S.C. 8484】

## TITLE IX—EFFECTIVE DATES

### SEC. 901. EFFECTIVE DATES.

Unless otherwise provided in this Act, the provisions of this Act shall take effect 180 days after the date of the enactment of this Act, except that the Secretary may issue rules pursuant to such provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment.

【42 U.S.C. 8301 note】

### SEC. 902. INTERIM PETITION AND CONSIDERATION FOR CERTAIN EXEMPTIONS.

(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date

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of the enactment of this Act with the appropriate State agency for authorization to construct such powerplant, the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III, notwithstanding section 901 or the fact that all rules related to such petition have not been prescribed at the time.

(b) EXEMPTIONS UNDER SECTION 211 (d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d), notwithstanding section 901 or the fact that all rules related to such petition have not been prescribed at the time.

【42 U.S.C. 8301 note】